

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICHOLAS MAGALIOS,

Plaintiff,
-against-

C.O. MATHEW PERALTA,
C.O. TIMOTHY BAILEY and
C.O. EDWARD BLOUNT,

Defendants.
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COMPLAINT

Plaintiff Demands
A Trial By Jury

Plaintiff, by his attorneys Sivin & Miller, LLP, complaining of defendants,
alleges as follows, upon information and belief:

THE PARTIES AND JURISDICTION

1. That at all times herein mentioned, plaintiff was and is a citizen of the State of New York.
2. That at all times herein mentioned, plaintiff was an inmate at the Fishkill Correctional Facility (Fishkill), in Beacon, NY, and was under the care, custody, and control of the New York Department of Corrections and Community Supervision (DOCCS).
3. That at all times herein mentioned, defendants were and are citizens of the State of New York.
4. That at all times herein mentioned, defendant C.O. Mathew Peralta (Peralta) was a corrections officer employed at Fishkill by DOCCS.
5. That at all times herein mentioned, Peralta was acting within the course and scope of his employment as a DOCCS corrections officer.

6. That at all times herein mentioned, Peralta was acting under color of state law.

7. That at all times herein mentioned, defendant C.O. Timothy Bailey (Bailey) was a corrections officer employed at Fishkill by DOCCS.

8. That at all times herein mentioned, Bailey was acting within the course and scope of his employment as a DOCCS corrections officer.

9. That at all times herein mentioned, Bailey was acting under color of state law.

10. That at all times herein mentioned, defendant C.O. Edward Blount (Blount) was a corrections officer employed at Fishkill by DOCCS.

11. That at all times herein mentioned, Blount was acting within the course and scope of his employment as a DOCCS corrections officer.

12. That at all times herein mentioned, Blount was acting under color of state law.

13. That this Court has jurisdiction over this action in that the action arises under 42 USC § 1983 and alleges violations of plaintiff's civil rights, including rights guaranteed under the Eighth and Fourteenth Amendments to the United States Constitution.

VIOLATIONS OF PLAINTIFF'S CIVIL RIGHTS

14. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

15. That on September 3, 2017, inside Fishkill, Peralta and Bailey, together with other corrections officers whose identities are unknown to plaintiff, without

any legal justification and not in furtherance of any legitimate penological interest, brutally attacked plaintiff by, among other things, punching, kicking, and slapping plaintiff multiple times in the head and body and otherwise using force against plaintiff that was not privileged or justified.

16. That Blount observed the aforementioned attack on plaintiff, had a reasonable opportunity to intervene to prevent and/or stop the attack on plaintiff, and deliberately failed to do so.

17. That Peralta observed the aforementioned attack on plaintiff, had a reasonable opportunity to intervene to prevent and/or stop the attack on plaintiff, and deliberately failed to do so.

18. That Bailey observed the aforementioned attack on plaintiff, had a reasonable opportunity to intervene to prevent and/or stop the attack on plaintiff, and deliberately failed to do so.

19. That as a result of the aforementioned collective actions of defendants, plaintiff sustained severe physical and emotional injuries, including but not limited to a severe injury to the right shoulder that required surgical repair, and endured and will continue to endure pain and suffering, loss of enjoyment of life, extreme emotional distress, medical expenses, and other economic loss.

20. That the actions of defendants herein were intentional, sadistic, and malicious, and served no legitimate penological interest.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS
(42 USC § 1983: Eighth Amendment)

21. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

22. That the aforementioned acts by defendants were in violation of the rights guaranteed to plaintiff under the Eighth Amendment to the US Constitution to be free from cruel and unusual punishment.

23. That as a result thereof, plaintiff is entitled to recover damages from defendants pursuant to 42 USC § 1983.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS
(42 USC § 1983: Fourteenth Amendment)

24. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

25. That the aforementioned acts by defendants were in violation of the substantive due process rights guaranteed to plaintiff under the Fourteenth Amendment to the US Constitution.

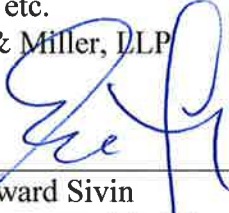
26. That as a result thereof, plaintiff is entitled to recover damages from defendants pursuant to 42 USC § 1983.

WHEREFORE, plaintiff seeks judgment against defendants, and all of them, on the aforementioned causes of action, in the form of compensatory damages in the amount of Two Million (\$2,000,000.00) Dollars and punitive damages against each of the defendants, each in the amount of One Million (\$1,000,000) Dollars.

Plaintiff also seeks attorney's fees against defendants pursuant to 42 USC § 1988, and interest, costs, and disbursements of this action.

Dated: New York, New York
July 2, 2019

Yours, etc.
Sivin & Miller, LLP

By 
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